IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1024 OF 2005

Balasaheb Vishwanath Bhogde & Anr ...Petitioners

Versus

The State of Maharashtra ...Respondent

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Mr. Nitin Jamdar, Advocate for Petitioners

Mr. Y.S. Shinde, A.P.P. for State.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 29TH AUGUST, 2005

P. C.:-

1. Heard the learned advocate for the petitioners and the learned A.P.P. for the State.

2. The petitioners are alleged to have committed theft of electricity during the period from Feb. 1998 to 5th March, 2001. Mr. Arun Thorat, Deputy Executive Engineer, lodged a complaint against the petitioners. The matter was investigated by Jail Road Police Station, Solapur and charge sheet came to be filed by them on 6.3.2001 against the petitioners for the offence under Section 39 of Indian Electricity Act, 1910.

3. It is contended by the learned advocate for the

petitioners that the offence in question took place during the period from Feb. 1998 to March, 2001 and at that time the old Act i.e. Indian Electricity Act, 1910 was in existence and hence, the petitioners should be tried as per the provisions of the old Act and not as per the provisions of the New Act i.e. Electricity Act, 2003.

4. An application came to be preferred by the petitioners before the Sessions Court where the case was pending i.e. Sessions Case No. 124 of 2004. In the said application, it was stated that as the offence pertains to the period from 1998 to 2001, the case could not be tried as per the new Act and hence, the Court which was trying the case, did not have jurisdiction to try the said case, hence, the trial should not proceed. However, the learned Sessions Judge by order dated 18.2.2005 rejected the said application. Being aggrieved by the said order, this petition has been preferred.

5. Thus, the main contention canvassed on behalf of the petitioners is that the theft of electricity had taken place prior to 2003 i.e. before the new Act came into force and hence, the Sessions Court would have no jurisdiction to try the said case.

6. The period during which the alleged theft of

electricity took place, was from February 1998 to March, 2001. The new Act i.e. Electricity Act, 2003 was enacted in the year 2003. Section 185 interalia provides that the Indian Electricity Act, 1910 is repealed. Section 185 of the new Act has a repeal and saving clause. Sub-Section 1(a) of Section 185 clearly provides that anything done under the old Act shall be deemed to have been done under the corresponding provisions of 'this Act'. In view of the repeal clause, the Indian Electricity Act, 1910 is no longer in existence. In such case, it is clear that the accused has to be dealt with as per the provisions of the new Act.

7. It is no doubt true that new Act provides for civil liability which was not there in the old Act. From the provisions of the new Act it is clear that there is no alternative but to try the old cases under the new Act. Thus, in view of Section 185, offences under the old Act would have to be tried under the new Act.

8. The petitioners were being prosecuted under Section 39 of the old Act. Section 39 of the old Act is equivalent to Section 135 of the new Act. In view of Section 153 of the new Act the offences under Sections 135 to 139 are to be tried by the Special Court. When the Special Court is not available then

the matter is to be disposed of in accordance with the directions of the District and Sessions Judge having jurisdiction over the ordinary place of sitting of the Special Court.

9. It is not disputed that the Sessions Judge trying the matter was also given powers of the Special Court under the Electricity Act. In this view of the matter, the learned Sessions Judge did have jurisdiction to try the present case. No fault can be found with the order passed by the learned Sessions Judge. Hence, no interference is called for. Writ petition is rejected.

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